C.J.R. Transfer, Inc., a/k/a C. J. Rogers Transfer, Inc., and its alter egos, Leoni Sand & Gravel Co. and W.P.M., Inc. *and* Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO Local 322, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Party in Interest. Cases 7–CA–28779, 7–CA–29751, 7–CA–29753(1), and 7–CA–29753(2)

December 31, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On August 31, 1990, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions [1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, C.J.R. Transfer, Inc., a/k/a C. J. Rogers Transfer, Inc., Melvindale and Flint, Michigan, and its alter egos, Leoni Sand & Gravel Co. and W.P.M., Inc., their officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] We correct Conclusion of Law 11 to state that Leoni Sand & Gravel directed an employee to ascertain and divulge the unit drivers' sympathies toward Teamsters Local 614 rather than Teamsters Local 332.

Richard Whiteman, Esq., for the General Counsel.
Robert J. Solner, Esq., of Birmingham, Michigan, and *Gabriel D. Hall, Esq.*, of Southgate, Michigan, for the Respondents.
John R. Canzano, Esq., of Southfield, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This consolidated case was tried in Detroit, Michigan, on February 1, March 1–2, and May 21, 1990. The charge in Case 7–CA–28779 was filed against C.J.R. Transfer, Inc. a/k/a C.J. Rogers Transfer, Inc. (Transfer) by Teamsters Local 247 on January 9 and amended February 14, 1989. A complaint was issued February 15 and amended December 5, 1989, and at the trial. The charges in Cases 7–CA–29751 and 7–CA–29753 were filed against Transfer, Leoni Sand & Gravel Co. (Leoni Sand), and W.P.M., Inc. (WPM) on October 5 and amended October 17, 1989. A consolidated complaint was issued December 1, 1989, and amended at the trial, and a second order consolidating cases was issued January 25, 1990.

In May 1986 Transfer signed a 5-year prehire agreement with the Teamsters Flint Local 332. In August 1987, after Local 247 filed a representation petition, Transfer moved its sand and gravel trucks at its Melvindale facility (in Local 247's Detroit jurisdiction) to its smaller facility in Flint (in Local 332's jurisdiction) for 9 weeks. Local 247 lost the November 13, 1987 election and filed objections and a charge against Transfer.

On April 21, 1989, Administrative Law Judge Jacobs found in the earlier case that Transfer had illegally supported Local 332, transferred its Melvindale drivers to the Flint facility ''to avoid having to bargain with Local 247,'' and engaged in ''extensive and pervasive'' coercive conduct, requiring a bargaining order. On September 30, 1989, while the judge's decision was pending before the Board, Transfer again moved the Melvindale trucks into Local 332's jurisdiction.

Transfer this time terminated all *27* unit drivers at the Melvindale and Flint facilities and ceased operations. The trucks were leased to two other companies, owned and operated by the Leoni family. These companies, Leoni Sand and WPM—evidently to avoid dealing with Local 247—hired *31* drivers, only 15 of whom (less than a majority) were discharged Transfer drivers.

The Board in the earlier case, *C.J.R. Transfer*., 298 NLRB 579 (1990), affirmed Judge Jacobs' findings and conclusions as modified. It ordered Transfer to (1) cease recognizing and bargaining with Local 332, (2) refund all union dues withheld since November 1, 1987, (3) offer reinstatement to a driver discharged for supporting Local 247, (4) make whole all employees transferred to Flint for the extra mileage and extra time needed to commute to and from the Flint terminal, (5) cease the threats and other coercion, and (6) recognize and bargain with the Teamsters Detroit Local 247.

On August 1, 1990, District Judge Gilmore in a 10(j) proceeding in the present case, *Gottfried v. C.J.R. Transfer*., Civil No. 90–1187 (E.D.Mich.), ordered that the petition for an injunction be granted against C.J.R. Transfer, Inc. a/k/a C.J. Rogers Transfer, Inc. and its alter egos, Leoni Sand & Gravel Co. and W.P.M., Inc., pending final disposition before the Board.

The court enjoined the Respondents from (1) requiring sand and gravel drivers to sign authorization or membership cards for Teamsters Local 332 or unlawfully assisting that Local in its attempts to organize the unit employees, (2) recognizing Local 332 as the bargaining representative, (3) relocating trucks or unit work from its Melvindale and Flint facilities or terminating unit employees because of their support of Teamsters Local 247, (4) refusing to recognize Local 247, and (5) refusing to bargain in good faith with Local 247.

The court also required the Respondents to take the following affirmative action: (1) restore on an interim basis to the Melvindale and Flint facilities to the extent not already done all trucks, unit work, and unit employees relocated to Leoni Sand and WPM, (2) offer to all unit employees who were terminated September 30, 1989, as a result of the relo-

cation decision, to the extent not already done, interim reinstatement to their former positions and working conditions, displacing if necessary any replacement employees, and make the offers of reinstatement to all former employees now working for Leoni Sand and WPM, and (3) recognize Local 247 as the exclusive representative of the unit employees at the Melvindale and Flint facilities and, on request, bargain in good faith.

The primary issues are whether, in violation of Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act,

1. On July 25, 1988, Transfer continued to recognize and bargain with the Teamsters Flint Local 332 and continued in force the 1986 prehire agreement, including union-security and dues-checkoff clauses.

2. On July 25, 1988, Transfer unlawfully informed unit employees that the prehire agreement required the deduction of union dues.

3. On September 30, 1989, Transfer discharged all its sand and gravel drivers and ceased operations to discourage employees from supporting the Teamsters Detroit Local 247.

4. Transfer ceased its operations without prior notice to Local 247 and without affording Local 247 an opportunity to bargain regarding the decision to cease operations and the effects of the decision.

5. Leoni Sand and WPM were alter egos of Transfer, and whether Leoni Sand since September 30, 1989, and WPM from September 30 until December 1989, continued the sand and gravel operations substantially unchanged.

6. On September 30, 1989, Leoni Sand and WPM refused to hire all the Transfer sand and gravel drivers to discourage support of Local 247.

7. Since September 30, 1989, Transfer, Leoni Sand, and WPM have unlawfully failed and refused to recognize and bargain with Local 247.

8. About October 2, 1989, Leoni Sand informed unit employees they were required to sign Local 332 authorization and membership cards.

9. On October 6, 1989, Leoni Sand renewed its unlawful recognition of Local 332.

10. About February 15, 1990, Leoni Sand directed an employee to ascertain and divulge the drivers' sympathies toward being represented by Teamsters Local 614.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondents, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents, Transfer, Leoni Sand, and WPM, are corporations and each has over $50,000 in annual direct or indirect outflow. They admit, and I find, that each is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Teamsters Locals 247 and 332 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Like the earlier case, *C.J.R. Transfer*, 298 NLRB 579 (1990), this case involves continuing efforts by Transfer (one of the group of companies owned and operated by the Leoni family) to avoid dealing with the Teamsters Detroit Local 247.

As found in the earlier case (G.C. Exh. 2, p. 3), Transfer recognized and signed a prehire agreement with the Teamsters Flint Local 332 on May 19, 1986, a day before the first employee was hired. Thereafter ''some 22 additional drivers were hired, most of them to work out of Melvindale.'' Although the legality of this prehire agreement is not in issue, I find it clear that Transfer signed the agreement in Flint, rather than in the Detroit area where most of the drivers would work, to avoid signing a Local 247 contract.

After Local 247 filed a representation petition on August 19, 1987, Transfer revealed its reasons for refusing to deal with Local 247 and the length to which it would go to avoid doing so. On Saturday, August 22, Transfer informed the Melvindale drivers that they were being transferred to the Flint facility (from Local 247's to Local 332's jurisdiction). As found (G.C. Exh. 2, p. 6, fn. 10), William Leoni Sr., his sons Michael, Patrick, and William Jr., and Truck Supervisor Jerry Main ''were responsible for the trucks being transferred to Flint in August.''

Also as found (G.C. Exh. 2, pp. 4–6), Transfer Vice President Patrick Leoni informed one group of drivers that ''he was having union troubles'' and ''they would never be coming back to Melvindale because he was going to build a shop in Holly [at the sandpit about 16 miles from Flint], park all the trucks up there, and work on them there.'' He told another group that they would be parking in Flint ''because there was a problem with the Detroit Local [247],'' that ''he was going to build a pole barn [a garage for truck repairs] up in Holly and would park the trucks up there forever if he had to.'' When a driver complained that the drivers had been hired to work out of Melvindale, Leoni ''replied that *he did not want to send the trucks to Flint either* [emphasis added] but he could not work the trucks out of Melvindale without Local 247 on him.''

That evening the drivers were told to leave their trucks at the Flint facility. They were provided rides back to Melvindale in a chartered bus. For the next 9 weeks, Transfer required the drivers to park their trucks at the end of the day in Flint. ''Virtually all the drivers who testified indicated that after August 22 they continued to haul, for the most part, in the Detroit area, just as they had before their transfer from the Melvindale facility to Flint.'' Truck Foreman Jerry Main ''suggested that the trucks would remain in Flint until the Union problem was settled.''

On October 24, during the election campaign (G.C. Exh. 2, p. 7), Transfer ''announced to its drivers, without explanation, that henceforth the trucks would once again work out of Melvindale, except for about five [former Flint] employees who preferred to work out of Flint.''

On November 7, 1987 (6 days before the election), Transfer explained its reasons for opposing Local 247. As President Michael Leoni testified (G.C. Exh. 2, p. 10), he said

''that his *father* [emphasis added] had stated that he could not sign [Local 247's] road builders' agreement because of the unfunded liability provision but had no problem living up to the contract that he had then with Local 332 [which had disclaimed interest in the election].'' (The father, William Leoni Sr., is the vice president of Leoni Sand and the president of a large construction company, C.J. Rogers, Inc.) At the same meeting, Michael Leoni ''explained that for the employees to vote in Local 247 and for [Transfer] to agree to the contract which Local 247 was proposing would be expensive; that when he bid the jobs that the drivers were working, he had bid them so that he could get those jobs under the old Local 332 contract.''

Clearly, Transfer was determined to avoid dealing with Local 247.

B. *Continued Recognition of Local 332*

On July 25, 1988, 6 days after the close of the trial in the earlier proceeding, Transfer informed its sand and gravel drivers by letter (G.C. Exh. 11A) that ''our attorneys . . . advised us that Teamsters Local Union 332 does in fact have a valid and binding labor agreement with our company'' and that ''We have deducted union dues and are sending them to Local 332 and . . . will continue to deduct and forward the monthly dues.'' Transfer was referring to the 1986–1991 prehire agreement, which was found not to be a bar to an election in the 1987 representation proceeding.

It is undisputed that between July 29 and August 9, 1988 (Tr. 254, 280–281, 316–317, 345–346), Truck Supervisor Jerry Main required four of the newer employees (Charles McCormick, Adrian Garza, Arthur Handy, and Mark Peterson) to sign applications for membership and checkoff authorizations for Local 332.

For 5 months, from July to November 1988, Transfer withheld $27 a month (a total of $135) from each of 21 drivers. It transmitted five $567 checks (totaling $2835) to Local 332 for the union dues. Local 332 held the checks uncashed until November 17, 1988, when it returned them with a letter stating: ''These checks are being returned because Local 332 does not have a valid collective bargaining agreement with your company.'' (G.C. Exh. 11B–D.)

As found by the Board in the earlier case, *C.J.R. Transfer*., 298 NLRB 579 (1990), Transfer gave unlawful support to Local 332 and since October 23, 1987, ''when Local 332 disclaimed interest in representing the [Transfer] employees, Local 247 has been the exclusive bargaining representative'' of the unit employees.

In agreement with the General Counsel, I find that on July 25, 1988, Transfer unlawfully informed unit employees that the 1986 prehire agreement required the deduction of Local 332 union dues, violating Section 8(a)(1) and (2) of the Act. I also find that on July 25, 1988, Transfer unlawfully continued to recognize Local 332 as the bargaining representative of the unit employees, continued in force the 1986 prehire agreement, including the union-security and dues-checkoff clauses, and deducted $135 in dues from the wages of each of 21 unit employees, violating Section 8(a)(1), (2), and (3). *Whitewood Oriental Maintenance Co*., 292 NLRB 1159 fns. 28 and 33 (1989).

The parties stipulate that the following unit is appropriate for bargaining.

> All full-time and regular part-time sand and gravel truck drivers employed by the employer, including those hauling materials to and from construction sites, those who drive straight jobs, semis, double bottom trucks, and lo-boy drivers employed by the employer in an ancillary capacity to construction operations; but excluding all employees engaged in steel hauling operations, office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

C. *Cease Operations*

1. Secret preparations

Judge Jacobs' decision, finding that Transfer had illegally supported Local 332 and that an order requiring Transfer to bargain with Local 247 was necessary, issued April 21, 1989. Instead of complying with the recommended Order or awaiting Board review, Transfer began making secret preparations to cease operations, obviously to avoid dealing with Local 247.

On May 17, 1989, Transfer's labor attorney, Robert Solner, filed articles of incorporation (G.C. Exh. 7) for a new corporation, Leoni Sand and Gravel Co. On July 6, 1989, Attorney Robert Schuler applied to the Michigan Public Service Commission (MPSC) for the transfer of operating authority from Transfer to Leoni Sand and another Leoni company (C.J. Rogers Trans. Co.). The letter (G.C. Exh. 14B) explained:

> For reasonable business purposes, *Mr. and Mrs. William H. Leoni [Sr]., who control the three companies* [Transfer, Leoni Sand, and the other company, emphasis added], have decided to eventually dissolve [Transfer] and transfer its assets to a newly formed company also controlled by the Leonis, Leoni Sand and Gravel Co. . . . Because there will be no change in control, and because of the timing involved, the parties request *temporary authority* for the two transferees . . . to operate the respective portions of [Transfer].

As found in the earlier case (G.C. Exh. 2, p. 6, fn. 10), the wife (JoAnne Leoni) ''owns the stock in [Transfer] while [the husband, William Leoni Sr.] oversees its financial activity and has signed collective-bargaining agreements on its behalf.''

When the temporary authority was delayed (Tr. 114–116), Attorney Schuler telephoned MPSC Supervisor Robin Storm on August 3, 1989, and said it was needed because there were ''business reasons and among those . . . a *union situation* [emphasis added].'' She noted on the first page of Schuler's letter:

> Per Bob Schuler on
> 8–3
> union situation

A MPSC certificate (G.C. Exh. 24G) was issued September 26, 1989, granting the requested transfer of authority from Transfer to Leoni Sand to transport sand, gravel, excavation materials, etc.

Meanwhile in early September, somebody advertised in the Flint Journal for short double and gravel train drivers, ''steady work, good salary and benefits,'' and gave a phone number—but no name. As Flint driver Charles McCormick credibly testified (Tr. 259–261), he telephoned the number and a man answered ''Just with a hello, no company name.'' He recognized the voice of Donald Bailey, the Transfer safety and personnel director (see G.C. Exh. 39). Bailey ''told me they were looking for a lot of drivers and that it would be union scale and come out and fill out an application.'' Bailey said McCormick would ''see a trailer there and a fenced lot and . . . come right in the trailer.''

Thus, presumably Transfer, Leoni Sand, or the Leonis were secretly preparing to replace some or all the current Transfer drivers who—instead of quitting—had endured hours of extra driving to and from work for 9 weeks in 1987 when Transfer relocated them from Melvindale to Flint ''to avoid having to bargain with Local 247.''

2. Summary discharge of all drivers

On Saturday, September 30, 1989, Transfer dispatched all the Melvindale drivers at the end of the day to the Flint yard for loads of stone or crushed concrete to deliver to a customer in the Detroit area (Tr. 55–56, 347, 463). There was no indication that both they and the Flint drivers were to be summarily discharged.

Upon reaching the Flint yard, the Melvindale and Flint drivers were instructed to wait for a meeting. About 5 o'clock, Transfer President Michael Leoni appeared with his attorney, Safety and Personnel Director Bailey, and an office employee. He told the drivers that Transfer was going out of business at midnight and that all the employees were permanently laid off. There were 25 drivers present. Drivers Monroe Avant and Herbert Blomme were not present, and neither were the mechanics (Roger Drielich, Robert Ingram, Ricky Louchart, and John Manor), who were not in the bargaining unit. (Tr. 56–57, 348, 464–465.)

It is undenied that Leoni told the drivers that they were ''excellent'' drivers (Tr. 350), that they ''all did a great job'' (Tr. 465), and he hated to do it, but it was a business decision that he had to make, and there was nothing he could do about it (Tr. 57, 60). It is also undisputed that he explained that it was costing Transfer $300,000 in deadheading to the sandpit at Holly (Tr. 59, 289, 322, 350, 466) and he could not afford to pay that more. He further said that he was tired of all the ''aggravation'' he had in Melvindale and wanted to get the Company away from there (Tr. 57) and from ''just any kind of discrepancies between drivers and management'' (Tr. 332), an apparent reference to the drivers' representation by Local 247.

Leoni told the drivers there would be two companies, WPM (an excavation contractor) based out of Flint and a new company, Leoni Sand & Gravel, that would start Monday morning out of Holly (Tr. 57, 59). He said they could apply for jobs at both companies. When asked if they were going to get the jobs, Leoni said he had nothing to do with who would be hired, that it was all up to (Truck Supervisor) Jerry Main ''and to go home that night and they would contact us for work Monday'' (Tr. 60). As discussed above, Jerry Main was found in the earlier case to be one of those ''responsible for the trucks being transferred to Flint in August'' 1987.

Driver Kyle Cox asked, ''What local will be representing us?'' and Leoni asked what local was representing them at the time. Cox answered that ''it's all in court, we don't really have any representation right now.'' Leoni responded, ''Well, come Monday morning, you won't have any representation either.'' (Tr. 58.) As discussed below, Leoni Sand signed a recognition agreement the next week with the Teamsters Flint Local 332.

Each of the drivers was given a ''Notice of Termination,'' signed by President Michael Leoni. The notices read (G.C. Exh. 44):

> Effective 11:59 p.m. Saturday September 30, 1989 you are laid off permanently due to the closure of business.

After the drivers signed applications for employment at both Leoni Sand and WPM, Transfer returned the Melvindale drivers to the Melvindale terminal by chartered bus (Tr. 68, 207), as it had done 2 years earlier in its unlawful election campaign against Local 247.

Transfer President Michael Leoni gave the drivers no indication why, if excessive deadheading to the Holly sandpit were a problem or if he simply wanted to operate this part of the business separately, he did not merely establish a separate division and transfer the trucks to the sandpit—without discharging all the drivers.

Neither did Leoni give any reason for stating that he had nothing to do with the staffing of Leoni Sand or WPM. He is president and sole stockholder of Leoni Sand (Tr. 44; G.C. Exh. 1(oo)). A company witness, office employee Michelle Le Sage, credibly testified (Tr. 581) that Leoni does the hiring of drivers for Leoni Sand ''through [Safety Director] Don Bailey.'' Furthermore, Leoni testified at the trial (Tr. 624) that he is really the person in charge there. He is also an officer of WPM, with a one-third ownership (Tr. 45; G.C. Exh. 8). He undoubtedly had firsthand knowledge of the qualifications of all the drivers.

Michael Leoni's brother, Transfer Vice President Patrick Leoni (as the Board found in the prior proceeding) had informed Melvindale drivers 2 years earlier that they were being relocated because of ''union troubles,'' that the trucks would be parked in Flint ''because there was a problem with the Detroit Local [247],'' and that ''he was going to build a pole barn [a garage for truck repairs] up in Holly [at the sandpit] and would park the trucks up there forever if he had to.'' But there was no sign of a garage.

There was nothing at the sandpit except a fenced area, a slab of concrete to park as many as three trucks, an office trailer, and some oil drums and fuel tanks—no garage or any permanent building (Tr. 365–367). The trucks were parked there overnight, without any opportunity for repairs. The repairs are made about 60 or 70 miles away at the Melvindale garage (Tr. 367), except for minor repairs about 16 miles away at the Flint garage (Tr. 382, 405). Drivers go to an office at Melvindale for such business as visiting the safety director and filling out workers' compensation forms (Tr. 492–493).

3. Shifting defenses

By the fourth day of trial, when Leoni Sand President Michael Leoni testified, his $300,000-deadhead defense had

been belied by the testimony of two current drivers, Arthur Handy and Richard Near. Both credibly testified (Tr. 360, 369–370, 408, 409–412, 439–443, 481–482) that there was no less deadheading after the relocation of the trucks. It was primarily a matter of whether the trucks would be driven empty to the sandpit first thing in the morning or at the end of the day.

Leoni first claimed (Tr. 619) that the decision to liquidate Transfer was made June 1, 1989 (that is, 2 weeks *after* Transfer's labor attorney, Solner, filed articles of incorporation for Leoni Sand). He then claimed that the decision was made in early 1989, when he discussed it with his father, and guessed ''you just can't shut a company down and start up new tomorrow.'' He next testified (Tr. 621) that the decision ''was made right around the middle of May'' (that is, shortly after Judge Jacobs' decision issued).

When asked on direct examination why he liquidated Transfer, Leoni claimed (Tr. 621–622):

> A. The reason we did what we did was so that we could get a better organization for Leoni Sand and Gravel. I told my *dad* [emphasis added] that, you know, let me start the operation in Holly, let's buy our own fuel, let's pay for our own tires. When there's parts bought, they're going to be charged to that vehicle. Let me be separate. We were doing it before, it would come in to Melvindale and Flint, I've got a fuel tank over there, construction's got a fuel tank over here. When they ran out of fuel, they's take fuel from my side of the fence and it was disorganized. We'd get a flat tire, I don't know whether the tire was coming from my side of the fence or their side of the fence. When it came to in the mornings and getting the people out there, the mechanics would jump on maybe one of my trucks or someone else's trucks, I would have to use my labor to go chase some of their people. It was totally disorganized.

This, incredibly, was being offered as a defense—not for deciding to park the trucks at a different location or improving the accounting system—but for secretly forming a new company, for explaining in a letter requesting a transfer of operating authority that William Leoni Sr. (Michael Leoni's ''dad'') and his wife would control both the old company (Transfer) and the newly formed company (Leoni Sand), for seeking to expedite issuance of temporary authority by identifying one of the ''business reasons'' as a ''union situation,'' for secretly seeking replacements, and for summarily discharging Transfer's excellent drivers.

The answer does give some idea how the Leoni family businesses were interlocked, under the control of the father, William Leoni Sr. Furthermore, as found in the earlier proceeding, William Leoni Sr. (along with his three sons and the truck supervisor) was ''responsible for the trucks being transferred to Flint'' in August 1987 ''to avoid having to bargain with Local 247.''

Michael Leoni also claimed on the stand (Tr. 617) that ''our biggest problem was with [Transfer's] iron and steel [business] and sand and gravel [business] getting mixed up with my office in my computer. There wasn't enough space on our computer to handle all the payrolls, there wasn't enough space on the computer to handle accounts receivable and accounts payable.'' This, of course, could be a reason for seeking his father's approval to buy a separate computer or to place the sand and gravel drivers in a separate division, but not a defense for discharging all the drivers.

Leoni was later asked the leading question (Tr. 625):

> Q. (By Mr. Soliner): Mr. Leoni, at the time that you determined to liquidate Transfer, did the financing of equipment enter into that decision at all?
>
> A. Yes, it did.

When asked how, he gave an evasive answer, for obvious reasons. All the trucks were already purchased (on long-term lease) by his father's large construction company, C.J. Rogers, Inc., which would sublease them to either the old or new company, as well as to WPM. (By his demeanor on the stand, Michael Leoni appeared willing to fabricate any answer that might help his cause.)

Leoni later gave other purported reasons to justify ceasing the operations. I discredit them as clearly pretextual.

4. Concluding findings

I find that the General Counsel has made a prima facie showing sufficient to support the inference that the sand and gravel drivers' support of Teamsters Local 247 was a motivating factor in Transfer's decision to cease operations and discharge all the drivers. *Wright Line*, 251 NLRB 1083, 1089 (1980). Having rejected Transfer's shifting defenses, I find that it has failed to carry its burden to demonstrate that it would have ceased operations in the absence of the drivers' union activities. I therefore find that Transfer discriminatorily discharged the unit drivers to avoid dealing with Teamsters Local 247 and to discourage the drivers' support of Local 247, violating Section 8(a)(1) and (3) of the Act.

As discussed above, the Board found that Transfer was required to recognize and bargain with Local 247. I find that Transfer violated Section 8(a)(1) and (5) by failing to give prior notice to Local 247 and to afford it an opportunity to bargain regarding the decision to cease operations. *Whitewood Oriental Maintenance Co*., above at fn. 28.

I also find that Transfer violated its obligation to bargain with Local 247 about the effects of its decision, further violating Section 8(a)(1) and (5). *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981).

D. *Leoni Sand and WPM as Alter Egos*

Transfer ceased its sand and gravel operations on September 30, 1989, and Leoni Sand and WPM, without interruption, began the identical operations October 2, 1989.

Michael Leoni was president of both Transfer and Leoni Sand. Both companies were family-owned. The father or mother, Mr. or Mrs. William Leoni Sr., was the sole stockholder of Transfer (G.C. Exh. 2, p. 6, fn. 10; Tr. 44), William Leoni Sr. was the vice president of Leoni Sand (Tr. 27), and Michael Leoni was the sole stockholder of Leoni Sand as well as the president (Tr. 44). Donald Bailey was the safety and personnel director of Transfer (G.C. Exh. 39) and the safety director of Leoni Sand (Tr. 582). Jerry Main was the truck supervisor of both companies (Tr. 69, 395; G.C. Exh. 1(oo)).

The large construction company, C.J. Rogers, Inc. (with William Leoni Sr. president, G.C. Exh. 10) held title to all

the trucks (Tr. 629–632) and subleased trucks to Transfer and then to Leoni Sand (Tr. 632). Both Transfer and Leoni Sand billed C.J. Rogers, Inc. on an hourly basis for hauling the sand and gravel (Tr. 614, 616, 628).

Transfer and Leoni Sand operated in an identical manner, hauling for C.J. Rogers, Inc. to the same areas with the same trucks, which were repaired at the same garages in Melvindale and Flint (Tr. 367, 368, 373–374, 380–381, 395, 412–413).

Similarly, from October 2 until about the middle of December 1989, WPM was operating in the same manner, doing a portion of Transfer's hauling for C.J. Rogers, Inc. (Tr. 374, 395, 566–569). WPM drivers worked at some of the same jobs with Leoni Sand drivers, hauling the same materials (Tr. 263). WPM was also using C.J. Rogers, Inc.'s trucks (Tr. 568, 632–633) and had the same truck supervisor, Jerry Main (Tr. 395, 396). The one difference was that Leoni Sand had the required authorization from the Michigan Public Service Commission, but WPM did not. As MPSC Supervisor Storm credibly testified (Tr. 166), she did not receive any transfer of authority request from Transfer to WPM.

WPM was another family company, whose stock was owned equally by Leoni Sand President Michael Leoni and his two brothers, Patrick and William Jr. (Tr. 45). Patrick Leoni was vice president of both Transfer (G.C. Exh. 6) and WPM (G.C. Exh. 8).

I find that Leoni Sand and WPM were ''merely a disguised continuance of the old employer,'' *Howard Johnson Co. v. Hotel Employees*, 417 U.S. 249, 259 fn. 5 (1974), and that the transfer of the hauling of sand and gravel for C.J. Rogers, Inc. from Transfer to Leoni Sand and WPM was motivated by a desire to avoid dealing with Teamsters Local 247. I therefore find that Leoni Sand and WPM were alter egos of Transfer.

E. *Discriminatory Hiring*

On September 30, 1989, Transfer employed a total of 27 drivers in the bargaining unit. (The four mechanics on the last payroll, G.C. Exh. 26, were not in the bargaining unit, and Jeffrey Tallent was not a sand and gravel driver, Tr. 202, 205, 346.) Although Michael Leoni, the president of both Transfer and Leoni Sand, acknowledged on that date that the unit drivers were excellent drivers, Leoni Sand hired only eight of them on October 2, 1989: Herbert Blomme, Daniel Bollon, Robert French, Jack Linck, Jeffrey Lynch, John Nabozny, Richard Near, and Joseph Young (G.C. Exh. 27).

Without any explanation either at the time or at the trial, Leoni Sand failed to hire any of the remaining 19 drivers: Monroe Avant, Randy Bradshaw, Kyle Cox, John De La Garza, Joseph Eggerd, Paul Fisher, Adrian Garza, Arthur Handy, James Hiveley, John Kloka, Edward Levesque, Charles McCormick, Charles Partin, Mack Peterson, Michael Petroff, Charles Pitt, Rennie Sims, Charles Stander, and Michael Tadajewski (G.C. Exh. 26).

WPM hired 7 of these remaining 19 drivers, but admittedly only on a so-called temporary basis for the duration of the Operating Engineers strike that began over a month earlier in August (Tr. 15, 395, 561, 566–567). They were Randy Bradshaw, John De La Garza, Joseph Eggerd, Arthur Handy, Charles Partin, Charles Stander, and Michael Tadajewski (G.C. Exh. 30). The seven drivers were not aware that they were being hired as temporary employees. As found, they performed the same work as the Leoni Sand drivers, under the same truck supervisor, Jerry Main. They were not asked to cross any picket line. (Tr. 395–396, 431–435.)

The remaining 12 drivers were not hired, either as permanent or temporary employees. They were Monroe Avant, Kyle Cox, Paul Fisher, Adrian Garza, James Hiveley, John Kloka, Edward Levesque, Charles McCormick, Mack Peterson, Michael Petroff, Charles Pitt, and Rennie Sims. I note that 7 of these 12 drivers had been named in Judge Jacobs' May 19, 1989 decision as General Counsel witnesses (against Transfer) in the prior case (G.C. Exh. 2, pp. 9–11). They were Kyle Cox, Paul Fisher, Adrian Garza, James Hiveley, John Kloka, Edward Levesque, Charles Pitt, and Rennie Sims. (The only General Counsel witness that Leoni Sand hired was Jack Linck.)

The evidence indicates that Leoni Sand and WPM were hiring only the number of Transfer drivers that they could and still have them constitute a minority of the employees—to destroy Local 247's majority status. Leoni Sand hired 8 Transfer drivers and WPM hired 7, making a total of 15 bargaining unit drivers. At the same time, Leoni Sand and WPM hired a total of 16 other drivers (most of them apparently from the pool of applicants resulting from the newspaper ad placed by an unidentified party earlier in September). Leoni Sand hired 11 new employees and WPM hired 5, including 3 former WPM employees. (G.C. Exhs. 26, 27, 30.)

This *increased* the number of drivers from 27 to 31 and resulted in a ratio of 15 bargaining unit employees (represented by Local 247) to 16 others. I consider it most unlikely that this increase in the number of drivers and the resulting 15-to-16 ratio were a mere happenstance.

The Leoni Sand drivers reported to work at the Holly sandpit. The WPM drivers reported to work at the Flint yard until late November, when they also were told to report at the sandpit (Tr. 450). At both places, as found above, the drivers were working under the direct supervision of Truck Supervisor Main.

Sometime in December 1989, after the Operating Engineers strike ended, all the WPM sand and gravel drivers were terminated (Tr. 568) except one of the new employees (Samuel Dicks) who became a permanent employee and Arthur Handy, who worked until his truck broke down December 23 and was hired by Leoni Sand in early January 1990. Leoni Sand also hired three other ''temporary'' employees, Randy Bradshaw, John De La Garza, and Joseph Eggerd. It, however, also hired two additional drivers (Larry Tewksbury and Burt Wilcox, preventing the discharged Transfer employees from constituting a majority. (G.C. Exh. 29.)

After weighing all the evidence, I find that the General Counsel has made a prima facie showing sufficient to support the inference that a motivating factor for Leoni Sand's refusal to hire all the discharged Transfer drivers as permanent employees was its determination not to deal with the Teamsters Detroit Local 247. In the absence of any explanation at the trial for refusing to hire all the admittedly excellent Transfer drivers, I find that Leoni Sand and WPM, alter egos of Transfer, have failed to carry their burden of proving that 19 of the permanent Transfer drivers would not have been hired as permanent employees in the absence of their union activities.

I find that Leoni Sand and WPM, alter egos of Transfer, discriminated against 19 of the 25 Transfer drivers by refus-

ing to place them on the Leoni Sand payroll as permanent employees, by hiring 7 of them as so-called temporary employees, and not hiring the remaining 12 drivers, to discourage support of Local 247, violating Section 8(a)(1) and (3) of the Act.

I also find that despite the refusal to hire all the discharged Transfer drivers on a permanent basis, Local 247 remained the bargaining representative of the bargaining unit drivers. I therefore find that since September 30, 1989, Leoni Sand and WPM, alter egos of Transfer, have unlawfully failed to recognize and bargain with Local 247, violating Section 8(a)(1) and (5).

F. *Further Unlawful Assistance to Local 332*

It is undisputed that on the afternoon of October 2 or 3, 1989 (the first or second day of Leoni Sand's operation), when former Transfer driver Richard Near returned to the Holly sandpit, Truck Supervisor Jerry Main told him that the ''union guys'' were there from Local 332 and that he had to sign a card. As Near credibly testified, he said he did not want to sign a card, but Main ''Told me I had to.'' Then when Near went to his car, ''they were standing out by the cars'' and ''Told me to fill out a card . . . . just sign my name and they'd fill out the rest.'' As the supervisor had required, Near signed it. (Tr. 485–486.)

On October 6, 1989, Leoni Sand signed an agreement (G.C. Exh. 13), recognizing Teamsters Local 332 as the bargaining representative of all its truckdrivers and agreeing to negotiate a collective-bargaining agreement that would incorporate ''the standard Union Shop Clause,'' effective that date.

I find that Leoni Sand's requirement that driver Near sign the Local 332 authorization card and its signing the recognition agreement with Local 332 when Local 247 was the drivers' exclusive bargaining representative, constituted continued unlawful support of Local 332, violating Section 8(a)(1) and (2).

G. *Other Coercive Conduct*

About February 15, 1990, Leoni Sand Truck Supervisor Gary Reedy told driver Hardy at the Holly sandpit that President Michael Leoni had just found out that the sandpit, which was in Oakland County, was in the jurisdiction of Teamsters Local 614 and that he did not have to bargain with either Local 247 or 332. It is undenied, as Hardy credibly testified, that Reedy ''said for me to pass the word around and . . . ask these other . . . drivers . . . how they felt about 614 and what kind of feedback he would get on . . . what they said.'' (Tr. 379.)

Leoni Sand's only defense in its brief (at 11) is that ''The employee [Reedy] who did so was not employed by any of the Respondents.''

Michael Leoni admitted at the trial that Reedy replaced and had the same position as Jerry Main. Leoni claimed, however, that Main ''had nothing to do with the drivers.'' He testified that the drivers worked for Leoni Sand, whereas Main worked for C.J. Rogers, Inc., coordinating ''all the jobs and the needs for trucks'' (Tr. 613–614). I have no doubt, because of the interlocking of the Leoni businesses, that Jerry Main was on the C.J. Rogers, Inc. payroll. But to claim that Main ''had nothing to do'' with the Leoni drivers is a pure fabrication. Leoni Sand admitted in its answer that Main was a supervisor, and the evidence shows that all the drivers knew him to be their supervisor.

The evidence also shows that Reedy, as the Leoni Sand truck supervisor (although on the C.J. Rogers, Inc. payroll), performs the same supervision over the drivers as Main did, including scheduling and dispatching them (Tr. 577). About the middle of January Patrick Leoni announced to the Leoni Sand drivers that he had fired Jerry Main and that Reedy was replacing Main. The drivers know Reedy to be their supervisor (Tr. 367). In the short time he had been there, he demonstrated his supervisory authority by suspending a driver an additional day when the driver called in sick (Tr. 538).

I find that Truck Supervisor Reedy's directing driver Hardy to ascertain and divulge the drivers' sympathies was coercive and violated Section 8(a)(1).

Contentions and Concluding Findings

The Respondents contend in their brief (at 11) that ''There never was any intention on the part of the employer to be a runaway shop, avoid Teamsters union organization of its employees, and in fact, the employer has always attempted in every legal way to determine and ascertain which Teamsters Local their employees wanted as their bargaining representative.''

These contentions ignores the overwhelming evidence that the Respondents, under the control of William Leoni Sr., have engaged in drastic conduct, including the discharge of all Transfer's drivers, to avoid dealing with the Teamsters Detroit Local 247.

The evidence also shows that Leoni Sand and WPM, as alter egos of Transfer, participated in the unlawful action to deprive the sand and gravel drivers of representation by their chosen bargaining representative. I therefore find that all three Respondents must be ordered to remedy this gross misconduct.

CONCLUSIONS OF LAW

1. By ceasing operations on September 30, 1989, and discharging all its sand and gravel drivers to discourage the employees from supporting the Teamsters Detroit Local 247, Transfer engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

2. By ceasing its operations without prior notice to Local 247, the unit employees' bargaining representative, and without affording Local 247 an opportunity to bargain regarding the decision to cease operations and the effects of the decision, Transfer violated Section 8(a)(1) and (5).

3. Leoni Sand and WPM were alter egos of Transfer.

4. Leoni Sand since September 30, 1989, and WPM from September 30 to sometime in December 1989 continued the sand and gravel operations substantially unchanged.

5. By refusing on September 30, 1989, to hire all 27 of Transfer's discharged sand and gravel drivers to discourage their support of Local 247, Leoni Sand and WPM, alter egos of Transfer, violated Section 8(a)(1) and (3).

6. By continuing on July 25, 1988, to recognize and bargain with the Teamsters Flint Local 332 and continuing in force the 1986 prehire agreement, including union-security and dues-checkoff clauses, Transfer violated Section 8(a)(1), (2), and (3).

7. By informing unit employees on July 25, 1988, that the prehire agreement required the deduction of union dues, Transfer violated Section 8(a)(1).

8. By failing since September 30, 1989, to recognize and bargain with Local 247 as the representative of employees in the appropriate bargaining unit, Transfer, Leoni Sand, and WPM have violated Section 8(a)(1) and (5).

9. By requiring a unit employee about October 2, 1989, to sign a union card for Local 332, Leoni Sand, alter ego of Transfer, violated Section 8(a)(1).

10. By signing on October 6, 1989, a Local 332 recognition agreement, Leoni Sand, alter ego of Transfer, violated Section 8(a)(1) and (2).

11. By directing an employee about February 15, 1990, to ascertain and divulge the unit drivers' sympathies toward being represented by Teamsters Local 332, Leoni Sand, alter ego of Transfer, violated Section 8(a)(1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As found, the Respondent, C.J.R. Transfer, Inc., acting in part through its alter egos, Respondents Leoni Sand & Gravel Co. and W.P.M., Inc., has closed its Melvindale and Flint operations on September 30, 1989, discharged all its unit employees, and refused to rehired all of them to avoid dealing with the Teamsters Detroit Local 247.

As a necessary part of a remedy for this egregious misconduct, I find that C.J.R. Transfer, Inc. and its alter egos must (1) restore the sand and gravel operations as they existed before September 30, 1989, including a return of the operations to the Melvindale and Flint facilities, (2) offer all the discharged employees reinstatement, and (3) make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because the Respondents' egregious misconduct demonstrates a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring the Respondents to cease and desist from infringing in any manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, C.J.R. Transfer, Inc., a/k/a C.J. Rogers Transfer, Inc., Melvindale and Flint, Michigan, and its alter egos, the Respondents Leoni Sand & Gravel Co. and W.P.M., Inc., their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Closing its operations or discharging or otherwise discriminating against any employee for supporting the Teamsters Detroit Local 247.

(b) Ceasing operations without notifying and bargaining with Local 247.

(c) Discriminating against any supporter of Local 247 when hiring employees.

(d) Recognizing and bargaining with the Teamsters Flint Local 332 unless it is certified as the bargaining representative.

(e) Requiring employees to sign Local 332 membership or checkoff cards.

(f) Coercively interrogating any employee, or requesting any employee to interrogate other employees, about union support or sympathies.

(g) In any other manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the sand and gravel operations as they existed before September 30, 1989, including a return of its operations to the Melvindale and Flint facilities.

(b) Offer the following discharged employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

Monroe Avant	Jack Linck
Herbert Blomme	Jeffery Lynch
Daniel Bollon	Charles McCormick
Randy Bradshaw	John Nabozny
Kyle Cox	Richard Near
John De La Garza	Charles Partin
Joseph Eggerd	Mack Peterson
Paul Fisher	Michael Petroff
Adrian Garzar	Rennie Sims
Robert French	Charles Pitt
Arthur Handy	Charles Stander
James Hiveley	Michael Tadajewski
John Kloka	Joseph Young
Edward Levesque	

(c) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Make whole the discharged employees for any extra time spent and mileage driven resulting from the change in location of its facilities, from September 30, 1989, to the date of proper offer of reinstatement.

(e) Withdraw recognition of Local 332.

(f) Refund all Local 332 dues, not previously refunded, that have been deducted since July 25, 1989.

(g) On request, bargain with the Local 247 as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

All full-time and regular part-time sand and gravel truck drivers employed by the employer, including those hauling materials to and from construction sites, those who drive straight jobs, semis, double bottom trucks, and lo-boy drivers employed by the employer in an ancillary capacity to construction operations but excluding all employees engaged in steel hauling operations, office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Post at its facilities in Melvindale and Flint, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(j) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

IT IS FURTHER ORDERED that the complaints are dismissed insofar as they allege violations of the Act not specifically found.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and hag ordered us to post and abide by this notice.

WE WILL NOT close our operations or discharge or otherwise discriminate against any employee for supporting Teamsters Detroit Local 247.

WE WILL NOT cease operations without notifying and bargaining with Local 247.

WE WILL NOT discriminate against any supporter of Local 247 when hiring employees.

WE WILL NOT recognize and bargain with Teamsters Flint Local 332 unless it is certified as the bargaining representative.

WE WILL NOT require employees to sign Local 332 membership or checkoff cards.

WE WILL NOT coercively question any employee, or request any employee to question other employees, about union support or sympathies.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our sand and gravel operations as they existed before September 30, 1989, returning the operations to the Melvindale and Flint facilities.

WE WILL offer our following employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

Monroe Avant	Jack Linck
Herbert Blomme	Jeffery Lynch
Daniel Bollon	Charles McCormick
Randy Bradshaw	John Nabozny
Kyle Cox	Richard Near
John De La Garza	Charles Partin
Joseph Eggerd	Mack Peterson
Paul Fisher	Michael Petroff
Adrian Garzar	Rennie Sims
Robert French	Charles Pitt
Arthur Handy	Charles Stander
James Hiveley	Michael Tadajewski
John Kloka	Joseph Young
Edward Levesque	

WE WILL notify each of them that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

WE WILL make these employees whole for any extra time spent and mileage driven resulting from the change in location of our facilities, from September 30, 1989, to the date of proper offer of reinstatement.

WE WILL withdraw recognition from Local 332.

WE WILL refund all Local 332 dues, not previously refunded, that have been deducted from your wages since July 25, 1989.

WE WILL, on request, bargain with Local 247 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

All full-time and regular part-time sand and gravel truck drivers employed by the employer, including those hauling materials to and from construction sites, those who drive straight jobs, semis, double bottom trucks, and lo-boy drivers employed by the employer in an ancillary capacity to construction operations; but excluding all employees engaged in steel hauling operations, office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

C.J.R. TRANSFER, INC., A/K/A C.J. ROGERS TRANSFER, INC. AND ITS ALTER EGOS, LEONI SAND & GRAVEL CO. AND W.P.M., INC.